Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of)	
)	
Accelerating Wireline Broadband Deployment by)	WC Docket No. 17-84
Removing Barriers to Infrastructure Investment)	
)	

COMMENTS OF THE CITIES OF SAN ANTONIO, TEXAS; EUGENE, OREGON; BOWIE, MARYLAND; HUNTSVILLE, ALABAMA; AND KNOXVILLE, TENNESSEE

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The Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee (collectively, "Cities"), submit these comments in response to the Commission's Notice of Proposed Rulemaking and Notice of Inquiry ("NPRM/NOI") in this docket.¹

I. INTRODUCTION.

Each of the Cities already acts to promote broadband deployment through all technologies. But unlike the Commission, the Cities must also consider and balance factors other than the needs of broadband providers. They must also consider their obligations to promote public safety; to manage right-of-way ("ROW") capacity and congestion; to ensure that taxpayers receive adequate compensation for private profit-making use of the ROW and other public property; and to preserve unique local historic and scenic districts, neighborhoods, parks and viewsheds.

We urge the FCC <u>not</u> to adopt any new rules construing Section 253. *NPRM/NOI*¶¶ 100-12. Courts have capably fulfilled the tasks that Congress assigned them, not the
Commission, in Section 253. Further Commission intrusion is unwarranted, and would be
counterproductive and beyond the Commission's legal authority under Section 253 or any other
provision of the Communications Act.

San Antonio, Eugene, Bowie, Huntsville, and Knoxville are a geographically, topographically and historically diverse group of local governments, and each has its own, different experiences with wireline broadband providers. All share the goal of promoting the widespread availability of wireline broadband services to their residents, businesses, and visitors.

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¹ In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Inv., WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, FCC 17-37, 32 FCC Rcd. 3266, 3296-3301 (2017) ("NPRM/NOI").

But that is not, and cannot be, the Cities' only goal. Nor should the Commission, either in this proceeding or elsewhere, hamstring the ability of local governments to respond to each of their unique ROW, public safety, public property, and land use needs and interests. No provision of the Communications Act authorizes such heavy-handed FCC intrusion into local affairs.

San Antonio, with approximately 1.3 million residents, is the second largest city in Texas, and the seventh largest city in the nation. Both wireline and wireless broadband from multiple competitive providers are available throughout San Antonio. In fact, both wireline and wireless broadband are far more ubiquitously and competitively available in San Antonio than in many, especially rural, areas across the nation with far less demanding, and in some cases nonexistent, ROW management and compensation requirements. At the same time, pursuant to Texas law and the City Charter, San Antonio has, for over a century, imposed rent-based compensation on private entities that install facilities in the City's ROW, including ROW use by telecommunications, cable and broadband providers (among others). Indeed, ROW compensation from private sector telecommunications and cable providers is the third largest source of City revenue, exclusive of the City's municipal utilities.

San Antonio has long recognized and promoted the benefits of broadband deployment; it is served by multiple wireline broadband providers. But the City also must balance its promotion of the deployment of these technologies with preservation of its rich historic resources. San Antonio has over 2000 individual landmarks, 27 different locally designated historic districts, 19 sites on the National Register of Historic Places, and 5 historic missions with pending designations as UNESCO World Heritage Sites. The City has over 28 million visitors a year, and tourism is a significant part of the local economy. Because of the City's unique character

and history, all building and other structural alterations (including broadband facilities) in historic and riverfront areas are subject to review and approval.

Eugene is Oregon's second largest city, encompassing approximately 41.5 square miles, and home to over 160,000 people.² The City has a high percentage of professionals, with over one-third of the City's population having completed four or more years of college. Eugene is home to several colleges and universities, including the University of Oregon. Eugene's parks and open spaces provide tangible benefits to the City in areas such as water quality, flood protection, air quality, property values, and recreation.³ The City's pristine viewsheds are protected under the City code.⁴

Eugene has adopted and consistently applied its ROW access ordinances, rules and policies in a manner designed to promote wireline broadband infrastructure deployment while, at the same time, preserving the City's ability to ensure public safety and fair and adequate compensation for private commercial use of City ROW and other property. In 1997, Eugene

<u>Viewshed</u>. The transmission tower shall be located down slope from the top of a ridgeline so that when viewed from any point along the northern right-of-way line of 18th Avenue, the tower does not interrupt the profile of the ridgeline or Spencer Butte. In addition, a transmission tower shall not interrupt the profile of Spencer Butte when viewed from any location in Amazon Park. Visual impacts to prominent views of Skinner Butte, Judkins Point, and Gillespie Butte shall be minimized to the greatest extent possible. Approval for location of a transmission tower in a prominent view of these Buttes shall be given only if location of the transmission tower on an alternative site is not possible as documented by application materials submitted by the applicant, and the transmission tower is limited in height to the minimum height necessary to provide the approximate coverage the tower is intended to provide.

Eugene, Or., Code § 9.5750(7)(j).

² About Eugene, City of Eugene, https://www.eugene-or.gov/1383/About-Eugene (last visited June 13, 2017); QuickFacts: Eugene City, Oregon, U.S. Census Bureau, https://www.census.gov/quickfacts/table/PST045215/4123850 (last visited June 13, 2017).

³ Earth Economics, *Nature's Value: An Economic View of Eugene's Parks, Natural Areas and Urban Forest* at 2 (2015), https://www.eugene-or.gov/DocumentCenter/View/18659.

⁴ In this regard, the City Code provides:

adopted Ordinance No. 20083, governing telecommunications facilities in the City, including the imposition of ROW fees.⁵ Since that time, telecommunications and broadband facility deployment in Eugene has mushroomed, with Eugene enjoying far more broadband service availability than the national average.

Bowie, located in Prince George's County, is Maryland's fifth largest city, with approximately 55,000 residents. ⁶ In convenient proximity to Baltimore, Annapolis, and Washington, D.C., Bowie encompasses about 18 square miles, which includes 1,100 acres set aside as parks or as preserved open space. Bowie has over 22 miles of paths and trails, and 75 ball fields. Numerous institutions of higher education and government facilities are located near Bowie. According to the Census Bureau's American Community Survey of 2015, 50% of Bowie's adult residents have a bachelor's degree or higher. ⁷

Huntsville, the seat of Madison County,⁸ is now estimated to be the third-largest city in Alabama with a population of approximately 193,000.⁹ Within the Huntsville area, residents enjoy more than 27 miles of existing greenways and trails, as well as access to the Tennessee River, with an adopted Greenway Plan guiding the development of over 180 miles of interconnected canoe, pedestrian, biking and hiking trails.¹⁰ Technology, aerospace, and defense

⁵ Eugene, Or., Ordinance No. 20083 (1997) (codified at Eugene, Or., Code § 3.415).

⁶ About Bowie, City of Bowie, http://www.cityofbowie.org/95/About-Bowie (last visited June 13, 2017).

⁷ American Community Survey, U.S. Census Bureau, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk (last visited June 14, 2017) (select "Data Tables & Tools," select "Maryland" as the state, refine your selection by "Place" and select "Bowie City, Maryland").

⁸ Facts & Figures, City of Huntsville, https://www.huntsvilleal.gov/business/city-of-huntsville/facts-figures-about-huntsville/ (last visited June 13, 2017) ("Facts & Figures").

⁹ Paul Gattis, *Huntsville Now 3rd Largest City in Alabama, On Track to Become State's Largest*, AL (May 25, 2017) http://www.al.com/news/huntsville/index.ssf/2017/05/huntsville_surges_into_3rd-lar.html (last visited June 13, 2017).

¹⁰ Trails & Greenways, City of Huntsville, https://www.huntsvilleal.gov/environment/parks-recreation/parks-and-nature/trails-greenways/ (last visited June 13, 2017).

industries have a strong presence in Huntsville, with the Redstone Arsenal, NASA Marshall Space Flight Center and Cummings Research Park ("CRP") located nearby. ¹¹ As a city of professionals, nearly 40% of the City's adult population has completed four or more years of college, and there are a number of colleges and universities serving the Huntsville area, including the University of Alabama in Huntsville and Alabama A&M University. ¹² Thanks to its highly educated, motivated and skilled workforce, Huntsville has been and continues to be "forward-looking." The continued presence and commitment of the aerospace and defense industry in the area and the development of new industry (including biotech, biomedical and pharmaceutical), as well as the research parks and educational institutions, all support—and in some cases even demand—advanced communications capabilities. ¹³

Huntsville is not only forward-looking; it is also mindful of its past. The National Trust for Historic Preservation named Huntsville to its "2010 List of America's Dozen Distinctive Destinations." Richard Moe, president of the National Trust for Historic Preservation, has said: "Huntsville has beautifully preserved and protected so many of the diverse stories of its past, from its southern culture and heritage to its role as 'America's Space Capital', and its

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¹¹ Facts & Figures.

¹² QuickFacts: Huntsville City, Alabama, U.S. Census Bureau, https://www.census.gov/quickfacts/table/PST045216/0137000 (last visited June 13, 2017).

¹³ A brochure about Huntsville's CRP, "one of the world's leading science and technology parks," notes: "CRP companies demand access to a dependable, state-of-the art telecommunications network. Huntsville was the first metro area in the USA to establish 100% digital switching and transmission facilities, and CRP companies are still among the first in the nation to access new telecom technologies." *In re Acceleration of Broadband Deployment Expanding the Reach & Reducing the Cost of Broadband Deployment by Improving Policies Regarding Pub. Rights of Way & Wireless Facilities Siting*, WC Docket No. 11-59, Reply Comments of the City of Huntsville, Alabama at 3 n.6 (Sept. 30, 2011).

¹⁴ *Id.* at 3 & n.8.

citizens are not stopping there This designation recognizes not only their commitment to the past, but also their dedication to a sustainable future." ¹⁵

Knoxville is Tennessee's third largest city, ¹⁶ home to approximately 180,000 people, ¹⁷ and is the seat of Knox County. The City covers 104 square miles, and is situated in a valley between the Cumberland Mountains and Great Smoky Mountains. ¹⁸ The City is home to 97 parks and approximately 2,000 acres of park land, ¹⁹ and features 18 miles of downtown greenways along and nearby the Tennessee River. ²⁰ Nearly 30% of Knoxville's adult population has completed four or more years of college, ²¹ while nearby Oak Ridge is home to one of the Department of Energy's seventeen National Laboratories, and Knoxville houses the main campus of the University of Tennessee. ²² The Development Corporation of Knox County encourages business development within the area, highlighting Knoxville's status as the nation's

¹⁵ *Id.* at 3-4 & n.9.

¹⁶ *Demographics*, City of Knoxville, http://www.knoxvilletn.gov/visitors/knoxville_info/demographics/ (last visited June 13, 2017) ("*Demographics*").

¹⁷ Conventions, Sports & Leisure Int'l, *Market and Feasibility Analysis of the Knoxville Civic Auditorium and Coliseum: Appendix G, Key Demographic Metrics* at G-1 (Dec. 18, 2015), http://www.knoxvilletn.gov/UserFiles/Server_109478/File/PublicAssemblyFacilities/kcacstudy/KCACReportAppendixG-KnoxvilleDemographics.pdf.

¹⁸ Demographics.

¹⁹ *Parks*, City of Knoxville http://www.knoxvilletn.gov/government/city departments offices/parks and recreation/parks/ (last visited. June 13, 2017).

²⁰ Kathleen Gibi, *Greenways Add Options for Pedestrians and Bicyclists*, Knoxville Parks & Recreation Guide, at 5 (Oct. 22, 2015), http://knoxvilletn.gov/UserFiles/Servers/Server_109478/File/ParksRecreation/RecreationGuide2015.pdf.

²¹ American Community Survey, U.S. Census Bureau, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk (last visited June 14, 2017) (select "Data Tables & Tools," select "Tennessee" as the state, refine your selection by "Place" and select "Knoxville City, Tennessee").

²² Know Knoxville: Relocation, Knoxville Chamber, http://www.knoxvillechamber.com/relocation (last visited June 13, 2017).

tenth-best city in which to do business, according to rankings released in 2008 by *Forbes* magazine. ²³

II. COMMENTS.

As their opening comments in this proceeding, the Cities attach hereto (as Exhibits A and B, respectively) their comments and reply comments filed in response to *Streamlining PN*.²⁴ The Cities also attach (as Exhibits C, D and E, respectively), and incorporate by reference, the opening comments of the City of San Antonio and the City of Eugene and the reply comments of the City of San Antonio in the FCC's *ROW NOI* proceeding.²⁵

The Cities will respond further in the reply comment round of this docket.

²³ The Dev. Corp. of Knox County, *Knox County Profile: Commerce and Industry*, http://www.knoxdevelopment.org/CountyProfile/CommerceandIndustry.aspx (last visited June 13, 2017).

²⁴ In re Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition For Declaratory Ruling, WT Docket No. 16-421, Public Notice, 31 FCC Rcd. 13360 (WTB 2016) ("Streamlining PN").

²⁵ In re Acceleration of Broadband Deployment: Expanding the Reach & Reducing the Cost of Broadband Deployment by Improving Policies Regarding Pub. Rights of Way & Wireless Facilities Siting, WT Docket No. 11-59, Notice of Inquiry, 26 FCC Rcd. 5384 (2011) ("ROW NOI").

III. CONCLUSION

The Commission should refrain from adopting any new rules or issuing any declaratory rulings in this docket purporting to construe Section 253.

Respectfully submitted,

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